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1200 New York Ave., NW, Suite 400
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FILED

JAN 19 2010

**SECRETARY, BOARD OF
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

UTAH CHAPTER OF THE SIERRA CLUB,
et al.,

Petitioners,

Docket No. 2009-019
Cause No. C/025/0005

DIVISION OF OIL, GAS AND MINING,

Respondent, and

ALTON COAL DEVELOPMENT, LLC,

Intervenor-Respondent..

PETITIONERS' MOTION FOR LEAVE TO CONDUCT DISCOVERY

Pursuant to UT ADC R641-108-900 and Rules 26-37 of the Utah Rules of Civil Procedure, Utah Chapter of the Sierra Club ("Sierra Club"), Southern Utah Wilderness Alliance ("SUWA"), Natural Resources Defense Council ("NRDC"), and National Park Conservation Association

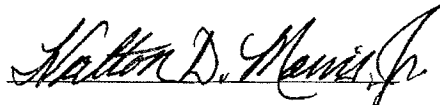
(“NPCA”)(collectively, “Petitioners”) respectfully move this Board to permit Petitioners to conduct discovery of respondent Utah Division of Oil, Gas and Mining (“the Division”) and intervenor-respondent Alton Coal Development, LLC (“ACD”). Petitioners propose to take the separate organizational depositions of the Division and ACD pursuant to Rule 30(b)(6) of the Utah Rules of Civil Procedure and the notices attached as Exhibits 1 and 2 to this motion. Petitioners further propose to request the Division and ACD to produce documents in response to Rule 34(a) of the Utah Rules of Civil Procedure and the requests attached as Exhibits 3 and 4 to this motion. Finally, Petitioners propose to request that ACD permit entry on land pursuant to Rule 34(b) of the Utah Rules of Civil Procedure and the request attached as Exhibit 5 to this motion. The authority and obligation of the Board to permit discovery in proceedings such as this one and the specific facts and legal issues on which it is appropriate to permit Petitioners to conduct the requested discovery are set forth in the supporting memorandum of fact and law that Petitioners file simultaneously with this motion.

WHEREFORE, for reasons set forth above and in Petitioners' supporting memorandum, Petitioners request that the Board enter an order permitting them to conduct the discovery described in Exhibits 1-5 to this motion.

Dated: January 15, 2010

Respectfully submitted,

By:



Attorneys for Utah Chapter of the
Sierra Club, *et al.*.

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of January, 2010, I served a true and correct copy of
PETITIONERS' MOTION FOR LEAVE TO CONDUCT DISCOVERY and each of its exhibits
to each of the following persons via electronic mail:

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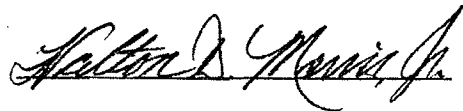


EXHIBIT 1

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**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

UTAH CHAPTER OF THE SIERRA CLUB,
SOUTHERN UTAH WILDERNESS
ALLIANCE,
NATURAL RESOURCES DEFENSE
COUNCIL, and
NATIONAL PARKS CONSERVATION
ASSOCIATION,

Docket No. 2009-019
Cause No. C0250005

Petitioners,

DIVISION OF OIL, GAS AND MINING,
ALTON COAL DEVELOPMENT, LLC, and
KANE COUNTY, UTAH,

Respondents.

**NOTICE OF DEPOSITION OF PERSON(S) MOST QUALIFIED FOR RESPONDENT
UTAH DIVISION OF OIL, GAS AND MINING PURSUANT TO UTAH RULE OF CIVIL
PROCEDURE 30(b)(6)**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT pursuant to Utah Rule of Civil Procedure 30(b)(6), petitioners Utah Chapter of the Sierra Club ("Sierra Club"), Southern Utah Wilderness Alliance ("SUWA"), Natural Resources Defense Council ("NRDC"), and National Park Conservation Association ("NPCA") (collectively, "Petitioners") will take the deposition(s) upon oral examination of the person(s) most qualified for respondent Utah Division of Oil, Gas and Mining ("the Division") concerning the topics described below. The deposition(s) shall commence at 9 a.m. on **[Date to be set upon granting of leave to conduct discovery]**, at the offices of the Southern Utah Wilderness Alliance, 425 East 100 South, Salt Lake City, Utah 84111. The deposition(s) will continue from day to day until completed. The deposition(s) will be recorded stenographically before an officer authorized by law to administer oaths.

PLEASE TAKE FURTHER NOTICE that, in accordance with Rule 30(b)(5) and Rule 34 of the Utah Rules of Civil Procedure, Petitioners request that the Division produce and permit Petitioners to inspect and copy at the designated time prior to the deposition the documents and items set forth in the Rule 34(a)(1) notice attached as Schedule A hereto, at the time and on the date designated in the Rule 34(a)(1) notice.

DEFINITIONS AND INSTRUCTIONS

The following definitions and instructions apply to the subjects listed below:

A. The terms "You," "Your," and "the Division" mean the Utah Division of Oil, Gas and Mining, including all of its leadership, administrators, officers, personnel, and all of its locations including all administrative locations, and all subsidiary organizations, affiliates, and all past or present leaders, administrators, officers, and personnel, and attorneys, persons or other entities acting on behalf of any person or office of the Division.

B. The terms “and” and “or” are terms of inclusion and not of exclusion and are to be construed either disjunctively or conjunctively as necessary to bring within the scope of these topics any responses that might otherwise be construed to be outside their scope. The word “all” shall mean “any and all.”

C. Nouns, whether singular or plural herein, shall be construed either as singular or plural as necessary to bring within the scope of these topics any responses which might otherwise be construed to be outside their scope.

D. The word “including” means “including without limitation,” as appropriate, so as to bring within the scope of the topic all responses that might otherwise be construed to be outside of its scope.

DEPOSITION TOPICS

Pursuant to Utah Rule of Civil Procedure 30(b)(6), the Division shall designate to testify on its behalf the person or persons most knowledgeable concerning each of the following matters:

1. The identity of each document included in permit application of Alton Coal Development, LLC, for the proposed Coal Hollow Mine on the date that the Division approved that application;

2. The identity of each document, if any, added to ACD’s permit application after the Division approved it;

3. The existence, identity, and nature of each document or other record (a) that contains information pertinent to challenged aspects of ACD’s permit application or the Division’s permit approval documents and (b) that are not included in ACD’s permit application or the Division’s permit approval documents, including but not limited to (i) field notes,

laboratory reports, or monitoring logs associated with hydrologic and geologic data concerning the permit or adjacent areas and (ii) correspondence between ACD or its consultants and the Division;

4. Each of the factual allegations and arguments set forth in Petitioners' Request for Agency Action in this proceeding;

5. Each of the responses to Petitioners' factual allegations or arguments set forth in "Division's Response to Request for Agency Action" previously filed in this proceeding, including but not limited to the portions of that document that Petitioners quote or reference in their memorandum in support of their motion for leave to conduct discovery;

6. Each of the responses to Petitioners' arguments set forth in "Respondent/Permittee's Response to Request for Hearing" previously filed in this proceeding, including but not limited to the portions of that document that Petitioners quote in their memorandum in support of their motion for leave to conduct discovery;

7. The adherence of ACD or the Division to, or their disregard of, published State or federal directives or guidelines for collecting baseline hydrologic and geologic data, determining the probable hydrologic consequences of mining, preparing hydrologic monitoring plans and hydrologic reclamation plans, performing cumulative hydrologic impact assessments, or determining the existence of alluvial valley floors, including without limitation (a) Utah Coal Regulatory Program Directive Tech-004 and any other pertinent directive that the Division may produce as a result of Petitioners' request for production of documents, (b) "(Draft) Guidelines for Preparation of a Probable Hydrologic Consequences Determination (PHC)," published by Office of Surface Mining Reclamation and Enforcement, December 1985, (c) "(Draft) Guidelines for Preparation of a Cumulative Hydrologic Impact Assessment (CHIA)," published

by Office of Surface Mining Reclamation and Enforcement, December 1985, (d) "Permitting Hydrology," published by Office of Surface Mining Reclamation and Enforcement, May 2002, (e) "Alluvial Valley Floor Identification and Study Guidelines" published by Office of Surface Mining Reclamation and Enforcement in 1983, and (f) such other pertinent published directives or guidelines as the Division or ACD may produce in response to Petitioners' request for production of documents or as Petitioners may designate three or more days prior to the date of deposition stated earlier in this notice;

8. The Division's review of the proposed Coal Hollow Mine on cultural and historic resources;

9. Each item of technical literature that ACD or the Division identifies in response to Petitioners' request for production of documents;

10. The Division's contentions, if any, on the validity and applicability to the proposed Coal Hollow Mine of the scientific principles and protocols described in each of the following documents:

In-Situ Inc., 2009, Automatic crest stage gages with continuous monitoring instruments: Technical Note, Crest Stage Gages: In-Situ Inc., Fort Collins, Colorado;

Waltemeyer, S.D., and Moore, S.J., 2005, Automated crest-stage applications in New Mexico: New Mexico Water Research Symposium - August 16, 2005;

Boning, C.W., 1988, Guidelines of the operation of crest-stage program, Programs and Plans: Office of Surface Water Technology Memorandum No. 88.07;

U.S. Geological Survey, 2005, Automated crest-stage gage application in ephemeral streams in New Mexico: U.S. Department of the Interior, U.S. Geological Survey, Fact Sheet 2005-3136;

U.S. Geological Survey, 2000, Comparison of Water-quality samples collected by siphon samples and automatic samplers in Wisconsin: Department of the Interior, U.S. Geological Survey, USGS Fact Sheet FS-067-00;

Diehl, T.H., 2008, A modified siphon sampler for shallow water: Department of the Interior, U.S. Geological Survey, Scientific Investigations Report 2007-5282;

Lane, S.L., Flanagan, S., and Wilde, F.D., 2003, Selection of equipment for water sampling, Chapter A2, Book 9, National Field Manual for the Collection of Water-Quality Data: U.S. Geological Survey, Techniques of Water Resources Investigations;

Rantz, S.E., and others, 2005, Measurement and computation of streamflow, Volume 1. Measurement of stage and discharge: U.S. Geological Survey, Water Supply Paper 2175;

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Buchanan, T.J. and Somers, W.P., 1982, Stage measurement at gaging stations, Chapter A7, in, Techniques of Water-Resource Investigation: U.S. Geological Survey.

11. The Division's September 17, 2009, meeting with Utah Governor Gary Herbert and representatives of ACD referenced in the Division's decision document issued on October 19, 2009 approving ACD's permit application; and

12. Any meetings, correspondence, or other contacts in addition to the September 17, 2009, meeting between the Division and the office of the Governor of Utah concerning the proposed Coal Hollow Mine.

Dated: ***

Respectfully submitted,

By:

Attorneys for Utah Chapter of the
Sierra Club, *et al.*.

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EXHIBIT 2

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DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

UTAH CHAPTER OF THE SIERRA CLUB,
SOUTHERN UTAH WILDERNESS
ALLIANCE,
NATURAL RESOURCES DEFENSE
COUNCIL, and
NATIONAL PARKS CONSERVATION
ASSOCIATION,

Docket No. 2009-019
Cause No. C0250005

Petitioners,

DIVISION OF OIL, GAS AND MINING,
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PLEASE TAKE FURTHER NOTICE that, in accordance with Rule 30(b)(5) and Rule 34 of the Utah Rules of Civil Procedure, Petitioners request that ACD produce and permit Petitioners to inspect and copy at the time of or before the deposition the documents and items set forth in the Rule 34(a)(1) notice attached to as Schedule A hereto, at the time and on the date designated in the Rule 34(a)(1) notice.

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B. The terms “and” and “or” are terms of inclusion and not of exclusion and are to be construed either disjunctively or conjunctively as necessary to bring within the scope of these topics any responses that might otherwise be construed to be outside their scope. The word “all” shall mean “any and all.”

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3. The existence, identity, and nature of each document or other record (a) that contains information pertinent to challenged aspects of ACD’s permit application or the Division’s permit approval documents and (b) that are not included in ACD’s permit application or the Division’s permit approval documents, including but not limited to (i) field notes, laboratory reports, or monitoring logs associated with hydrologic and geologic data concerning

the permit or adjacent areas, (ii) correspondence between ACD or its consultants and the Division, and (iii) correspondence between ACD and its consultants;

4. Each of the factual allegations and arguments set forth in Petitioners' Request for Agency Action in this proceeding;

5. Each of the responses to Petitioners' arguments set forth in "Respondent/Permittee's Response to Request for Hearing" previously filed in this proceeding, including but not limited to the portions of that document that Petitioners quote in their memorandum in support of their motion for leave to conduct discovery;

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11. The ACD's September 17, 2009, meeting with Utah Governor Gary Herbert and representatives of the Division referenced in the Division's decision document issued on October 19, 2009 approving ACD's permit application; and

12. Any meetings, correspondence, or other contacts in addition to the September 17, 2009, meeting between ACD and the office of the Governor of Utah concerning the proposed Coal Hollow Mine.

Dated: ***

Respectfully submitted,

By:

Attorneys for Utah Chapter of the
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EXHIBIT 3

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**BEFORE THE BOARD OF OIL, GAS AND MINING
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UTAH CHAPTER OF THE SIERRA CLUB,
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Docket No. 2009-019
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DIVISION OF OIL, GAS AND MINING,

Respondent, and

ALTON COAL DEVELOPMENT, LLC,
KANE COUNTY, UTAH,

Intervenors-Respondents.

PETITIONERS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
BY RESPONDENT UTAH DIVISION OF OIL, GAS AND MINING

Pursuant to leave of the Utah Board of Oil, Gas and Mining and Rule 34(a)(1) of the Utah Rules of Civil Procedure, the Utah Chapter of the Sierra Club ("Sierra Club"), Southern Utah

Wilderness Alliance (“SUWA”), Natural Resources Defense Council (“NRDC”), and National Park Conservation Association (“NPCA”)(collectively, “Petitioners”) request that respondent Utah Division of Oil, Gas & Mining (“the Division”) produce and permit Petitioners or their counsel to inspect and copy the following documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the Division into reasonably usable form):

1. Each document or other record (a) that contains information pertinent to challenged aspects of permit application filed by Alton Coal Development, LLC (“ACD”) or the Division’s permit approval documents and (b) that is not included in ACD’s permit application or the Division’s permit approval documents, including but not limited to (i) field notes, laboratory reports, or monitoring logs associated with hydrologic and geologic data concerning the permit or adjacent areas, and (ii) correspondence between ACD or its consultants and the Division;

2. Each Division guideline, directive, or training manual, or similar document that addresses in any manner (a) collection and interpretation of baseline hydrologic data, (b) preparation or evaluation of probable hydrologic consequences determinations, (c) preparation or evaluation of hydrologic monitoring plans, (d) preparation or evaluation of hydrologic operations plans, (e) performance of cumulative hydrologic assessments, or (f) preparation or evaluation of Alluvial Valley Floor determinations;

3. Each guideline, directive, training manual, or similar document published by the Office of Surface Mining Reclamation and Enforcement and possessed by the Division that addresses in any manner (a) collection and interpretation of baseline hydrologic data, (b) preparation or evaluation of probable hydrologic consequences determinations, (c) preparation or evaluation of

hydrologic monitoring plans, (d) preparation or evaluation of hydrologic operations plans, (e) performance of cumulative hydrologic assessments, or (f) preparation or evaluation of Alluvial Valley Floor determinations;

4. Each guideline, directive, training manual, or similar document published by the United States Geological Survey or any other entity and possessed by the Division that addresses in any manner (a) collection and interpretation of baseline hydrologic data, (b) preparation or evaluation of probable hydrologic consequences determinations, (c) preparation or evaluation of hydrologic monitoring plans, (d) preparation or evaluation of hydrologic operations plans, (e) performance of cumulative hydrologic assessments, or (f) preparation or evaluation of Alluvial Valley Floor determinations;

5. Each item of scientific or technical literature that the Division relies upon as support for its contention that the baseline hydrologic data contained in ACD's permit application are a sufficient basis for characterizing the pre-mining hydrologic balance of the proposed permit area and cumulative impact area established for that project, including but not limited to each document that the Division referred to in stating in its response to Petitioners' request for agency action that "[t]he published water quality data for the Alton Sink Valley has been compiled and evaluated by the U.S. Geological Survey and has reported that baseline levels [of total dissolved solids] in the Sink Valley area of 3000 mg/L range are common . . . [and] . . . represent pre-mine background conditions;"; and

6. Each document or electronic record requesting, planning, scheduling, describing the content of, or communicating information about ACD's September 17, 2009, meeting with Utah Governor Gary Herbert and representatives of the Division, including without limitation each set of notes made by a representative of ACD or any of its contractors who attended the meeting.

Dated:

Respectfully submitted,

By:

Attorneys for Utah Chapter of the
Sierra Club, *et al.*.

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EXHIBIT 4

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Intervenors-Respondents.

**PETITIONERS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
BY INTERVENOR/RESPONDENT ALTON COAL DEVELOPMENT, LLC**

Pursuant to leave of the Utah Board of Oil, Gas and Mining and Rule 34(a)(1) of the Utah Rules of Civil Procedure, the Utah Chapter of the Sierra Club ("Sierra Club"), Southern Utah

Wilderness Alliance (“SUWA”), Natural Resources Defense Council (“NRDC”), and National Park Conservation Association (“NPCA”)(collectively, “Petitioners”) request that intervenor-respondent Alton Coal Development, LLC (“ACD”) produce and permit Petitioners or their counsel to inspect and copy the following documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by ACD into reasonably usable form):

1. Each document or other record (a) that contains information pertinent to challenged aspects of ACD’s permit application or the permit approval documents of the Utah Division of Oil, Gas and Mining (“the Division”) and (b) that is not included in ACD’s permit application or the Division’s permit approval documents, including but not limited to (i) field notes, laboratory reports, or monitoring logs associated with hydrologic and geologic data concerning the permit or adjacent areas, (ii) correspondence between ACD or its consultants and the Division, and (iii) correspondence between ACD and its consultants;

2. Each Division guideline, directive, or training manual, or similar document possessed by ACD that addresses in any manner (a) collection and interpretation of baseline hydrologic data, (b) preparation or evaluation of probable hydrologic consequences determinations, (c) preparation or evaluation of hydrologic monitoring plans, (d) preparation or evaluation of hydrologic operations plans, (e) performance of cumulative hydrologic assessments, or (f) preparation or evaluation of Alluvial Valley Floor determinations;

3. Each guideline, directive, training manual, or similar document published by the Office of Surface Mining Reclamation and Enforcement and possessed by ACD that addresses in any manner (a) collection and interpretation of baseline hydrologic data, (b) preparation or

evaluation of probable hydrologic consequences determinations, (c) preparation or evaluation of hydrologic monitoring plans, (d) preparation or evaluation of hydrologic operations plans, (e) performance of cumulative hydrologic assessments, or (f) preparation or evaluation of Alluvial Valley Floor determinations;

4. Each guideline, directive, training manual, or similar document published by the United States Geological Survey or any other entity and possessed by ACD that addresses in any manner (a) collection and interpretation of baseline hydrologic data, (b) preparation or evaluation of probable hydrologic consequences determinations, (c) preparation or evaluation of hydrologic monitoring plans, (d) preparation or evaluation of hydrologic operations plans, (e) performance of cumulative hydrologic assessments, or (f) preparation or evaluation of Alluvial Valley Floor determinations;

5. Each item of scientific or technical literature that ACD relies upon as support for its contention that the baseline hydrologic data contained in its permit application for the Coal Hollow Mine are a sufficient basis for characterizing the pre-mining hydrologic balance of the permit area and cumulative impact area established for that project; and

6. Each document or electronic record requesting, planning, scheduling, describing the content of, or communicating information about ACD's September 17, 2009, meeting with Utah Governor Gary Herbert and representatives of the Division, including without limitation each set of notes made by a representative of ACD or any of its contractors who attended the meeting.

Dated:

Respectfully submitted,

By:

Attorneys for Utah Chapter of the
Sierra Club, *et al.*

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EXHIBIT 5

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**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

UTAH CHAPTER OF THE SIERRA CLUB,
et al.,

Petitioners,

Docket No. 2009-019
Cause No. C/025/0005

DIVISION OF OIL, GAS AND MINING,

Respondent, and

ALTON COAL DEVELOPMENT, LLC,
KANE COUNTY, UTAH,

Intervenors-Respondents.

**PETITIONERS' SECOND REQUEST THAT ALTON COAL DEVELOPMENT, LLC
PERMIT ENTRY UPON THE PERMIT AREA AND THOSE PARTS
OF THE CUMULATIVE IMPACT AREA THAT THE COMPANY CONTROLS**

Pursuant to leave of the Utah Board of Oil, Gas and Mining and Rule 34(a)(2) of the Utah Rules of Civil Procedure, the Utah Chapter of the Sierra Club ("Sierra Club"), Southern Utah

Wilderness Alliance (“SUWA”), Natural Resources Defense Council (“NRDC”), and National Park Conservation Association (“NPCA”)(collectively, “Petitioners”) request that intervenor-respondent Alton Coal Development, LLC (“ACD”) permit Petitioners’ representatives to enter on the permit area that ACD designated in Application No. C0250005, and those parts of the cumulative impact area designated in the cumulative hydrologic impact assessment that the Division of Oil, Gas and Mining (“the Division”) performed for that permit and to which ACD may lawfully grant access to others. Petitioners request such access for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property. The extent of the permit area and the cumulative impact area are more particularly described and mapped in Application No. C0250005 and the Division’s approval documents, respectively.

Petitioners’ representatives during the requested inspection include counsel of record, Petitioners’ consultant on geology and hydrology, including the existence of alluvial valley floors on the subject property, and no more than two of Petitioners’ members. Petitioners request entry on the subject lands beginning at 8:00 a.m. on **[DATE TO BE SET FOLLOWING MELT OF THE CURRENT SNOWCOVER]** and continuing through 5:00 p.m. on **[DATE TO BE SET FOLLOWING MELT OF THE CURRENT SNOWCOVER]**. Petitioners’ representatives intend to drive or hike to and across the areas to be inspected and to obtain samples of water, soil, or other earth materials by hand or hand-held instruments in a manner consistent with accepted scientific practice of geologists and hydrologists. If weather conditions on one or both of the designated days preclude observation of the land surface or sampling water, soils, or other earth materials, Petitioners intend to continue their inspection on either (1) the next successive day or days, or on such alternate dates as weather conditions and reasonable scheduling requirements may permit.

Dated:

Respectfully submitted,

By:

Attorneys for Utah Chapter of the
Sierra Club, *et al.*.

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